

When under the terms of an insurance contract, an insurance company pays for the complete loss of tangible personal property, including a motor vehicle, to a lessor as the loss payee, and title thereto is surrendered to the insurance company, a retail sale has not occurred and the transaction would not be taxable. See Ill. Adm. Code 130.2010. (This is a GIL.)

February 28, 2001

Dear Xxxxx:

This is in response to your letter dated January 5, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200. 120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you have stated and made inquiry as follows:

COMPANY is a lessor of various tangible personal property. Per lease agreement the lessee is required to carry all risk property insurance on the leased property. The coverage provides for rebuilding, repairing or replacing the equipment in the event of any damage, destruction, loss or theft of the equipment. These are strictly indemnity payments where COMPANY is compensated for the loss of the equipment rather than rental or purchase payments. COMPANY is named as loss payee. COMPANY would like to request a ruling on taxation of the above payments. Specifically, please address the following issues:

1. Are the indemnity payments subject to sales tax?
2. If so, what amount is subject to sales tax:
 - a/ salvage amount
 - b/ casualty loss value
 - c/ other
3. Is there a different in sales tax treatment between different categories of loss, for example loss due to act of God vs. loss due to theft.

Enclosed please find our standard Lease Agreement. Paragraph 16 discusses Casualty occurrence.

I would appreciate your input at your earliest convenience. If you have any additional questions, please contact the undersigned.

Due to the limited information contained in your letter as to the circumstances surrounding the nature of COMPANY business, we are unable to address the taxability of the indemnity payments as

received by COMPANY. We are enclosing for your information and reference a copy of 86 Ill. Adm. Code 130.2010, the Department's regulation covering the taxability of rental receipts. This letter also provides general information on the imposition of sales tax with regards to indemnity payments.

Rental receipts received by a lessor under a "true lease" agreement are not subject to Retailers' Occupation Tax because the lessor is deemed the end user of the tangible personal property and incurred Use Tax liability on the cost price of the leased property at the time of purchasing the property at retail. See 86 Ill. Adm. Code 130.220(a), enclosed for your reference. An exception to this would be in the rental of automobiles for one year or less, which are subject to the Automobile Renting and Use Tax found at 35 ILCS 155/1 et seq. A true lease agreement exists if at the end of the lease term there is no option to purchase the property and the property is returned to the lessor. If there is an option to purchase in the lease agreement, it must be for the fair market value of the property in order to be considered a true lease.

Where a lessor in leasing tangible personal property actually transfers the property to the lessee for a nominal purchase option amount, or for no further consideration, the lessor has made a conditional sale of the property and all payments received by the lessor are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

If at the close of a true lease agreement, the lessor sells the leased property to the lessee at its fair market value, taxation of the gross receipts from the sale depends upon whether the lessor is also in the business of selling tangible personal property to purchasers for use or consumption. If the lessor is not engaged in the business of selling tangible personal property, the sale may be considered an occasional sale and will not incur tax liability. See 86 Ill. Adm. Code 130.110. However, lessors engaged in the leasing of motor vehicles and who sell used motor vehicles to persons for use and not for resale are considered retailers and the gross receipts from those sales are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.111.

In general, if a lessor is not engaged in the business of selling tangible personal property to others for use or consumption and loss of the leased property occurs during the course of the lease agreement, the lessee's payment of the remainder of the lease payments plus the fair market value of the property on the date of loss, will not subject the transaction to Retailers' Occupation Tax. This would not be the case, however, if the lost property is a leased motor vehicle for which the lessee pays fair market value as of the date of the loss to the lessor and the lessor surrenders title thereto. In such case, a retail sale has occurred and the transaction is taxable.

However, when under the terms of an insurance contract, an insurance company pays for the complete loss of tangible personal property, including a motor vehicle, to a lessor as the loss payee, and title thereto is surrendered to the insurance company, a retail sale has not occurred and the transaction would not be taxable.

I hope this information has been helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

DDK:msk
Enc.